



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse13091448  
[REDACTED]

[REDACTED],  
Complainant,

v.

AMERICAN SENIOR COMMUNITIES,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On September 9, 2013, [REDACTED] ("Complainant") filed a Complaint with the Commission against American Senior Communities ("Respondent") alleging discrimination on the basis of sex (pregnancy) in violation of [REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter. An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent treated Complainant less favorably than similarly-situated non-pregnant employees. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations; and (4) she was treated less favorably than similarly-situated non-pregnant employees. It is evident that Complainant falls within a protected class by virtue of her sex and pregnancy and that she suffered an adverse employment action when she was placed on Family Medical Leave in August 2013. Further, evidence shows that Complainant was meeting Respondent's legitimate business expectations and that she was treated less favorably than similarly-situated non-pregnant employees.

By way of background, Respondent first hired Complainant on or about June 28, 2012 as a part-time Licensed Practical Nurse ("LPN") Charge Nurse. Less than a year later, on or about May 26, 2013, Complainant was promoted to a full-time Charge Nurse. At all times relevant to the Complaint, Complainant's duties included but were not limited to coordinating patient care,



monitoring delivery of care and services, making daily rounds, coaching and monitoring staff, completing reports, as well as lifting, carrying, pulling, and pushing up to 61 pounds or more. While Complainant had some attendance issues during her tenure with Respondent, she received a favorable annual review in July 2013 and was awarded a merit raise that same month.

On August 14, 2013, Complainant's physician issued restrictions stating that Complainant "may return to work with light duties of sitting job only until further notice due to pregnancy complications." That same day, Complainant's physician provided another note stating that Complainant was "to be off work till 8/21/13 due to pregnancy complications." Respondent admits that it received the restrictions on or about August 23, 2013 and determined that it could not accommodate Complainant's restrictions. Ultimately, Respondent advised Complainant that she was eligible for leave under FMLA and required Complainant to go on Family Medical Leave despite Complainant's requests for a modified work assignment.

Despite Respondent's assertions, evidence shows that it has provided light duty work or modified work assignments to similarly-situated non-pregnant employees. Specifically, witness testimony asserts that Respondent permitted a Certified Nursing Assistant with an injured wrist and restrictions prohibiting lifting, pushing, or pulling in excess of 15 pounds or more to feed residents, dress them, and perform other tasks that met her accommodations. Further, evidence shows that Respondent temporarily assigned another Certified Nursing Assistant with an injured shoulder and restrictions prohibiting lifting more than 11 pounds, pushing and pulling, and reaching above the shoulder work that met her restrictions. Simply stated, the Pregnancy Discrimination Act provides that an employer must treat a woman temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth the same way it treats other temporarily disabled employees. As evidence shows that Respondent has provided light duty or modified work assignments to at least two other temporarily disabled non-pregnant Certified Nursing Assistants but not to Complainant, probable cause exists to believe that Respondent violated the laws as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6

October 16, 2014  
Date

Akia A. Haynes  
Akia A. Haynes, Esq.  
Deputy Director  
Indiana Civil Rights Commission